

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Retrobrands USA LLC, Plaintiffs, v. General Mills Marketing, Inc., Defendant.	Case No. _____ COMPLAINT
-----------------------------------------------------------------------------------------------------------	----------------------------------------

JURY DEMAND

Plaintiff, Retrobrands USA LLC demands a jury trial on all issues and claims so triable.

NATURE OF ACTION

This is an action for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §2201 and §2202. Plaintiff Retrobrands USA LLC, for its complaint against Defendant, General Mills Marketing, Inc., alleges as follows:

PARTIES

1. Plaintiff, Retrobrands USA LLC (“Retrobrands”) is a Florida limited liability company with its principal place of business at P.O. Box 11106, Ft. Lauderdale, Florida 33339.

2. Defendant General Mills Marketing, Inc. (“General Mills”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at Number One General Mills Boulevard, Minneapolis, Minnesota 55426.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Retrobrands' federal claims, pursuant to 15 U.S.C. §1121 and 28 U.S.C. §1331 and §1338 because this Complaint raises federal questions under the Lanham Act, 15 U.S.C. §1051 et seq.

4. This Court has personal jurisdiction over General Mills because General Mills is located within the District of Minnesota.

5. Venue is proper in this Court under 28 U.S.C. §1391(b) and §1391(c), since a substantial part of the events giving rise to Retrobrands' claims occurred in this district and because General Mills is subject to personal jurisdiction in this district.

FACTUAL BACKGROUND

6. General Mills is the holder of the DUNKAROOS trademark registered on the principal register with the United States Patent and Trademark Office ("USPTO"), registration number 1755584, filed on October 1, 1991, for cereal-based food and frosting.

7. In the United States, use is required to maintain a trademark registration.

8. General Mills has not used the DUNKAROOS mark in commerce in the United States since 2012.

9. In a video on YouTube, licensed by General Mills, its employees discuss snacks from the past, including DUNKAROOS brand snacks.

10. In that video, the General Mills employees represent that the DUNKAROOS brand snacks have been discontinued since 2012.

11. In April 2018, amid social media rumors of a return of a DUNKAROOS

brand product, numerous articles were written in which a General Mills spokesperson, Mike Siemienas, unequivocally stated that the DUNKAROOS brand snacks were and had been discontinued in the United States:

We love hearing from our consumers, and we hear from them all the time whenever we discontinue a product because we know someone will miss our products.

12. General Mills has abandoned its use of the DUNKAROOS mark.

13. Despite General Mills' overt and intentional discontinuation of its use of the DUNKAROOS mark, on April 12, 2013 it filed a Combined Declaration of Use and Application for Renewal of a Mark ("Section 8 & 9 Declaration") with the USPTO.

14. In that Section 8 & 9 Declaration, General Mills provided a specimen that purported to show its continued use of the DUNKAROOS mark in commerce in the United States.

15. That specimen, which in the declaration is labeled "packaging," displays a cereal box for DUNKAROOS brand cereal.

16. The cereal box image provided as a specimen to evidence General Mills' continued use of the DUNKAROOS mark in commerce in the United States is clearly not intended for the United States.

17. The specimen image bears weight information in grams.

18. The specimen bears text in English and in French, including phrases such as "biscuits a la vanilla avec glaçage au chocolat" and "saveurs naturelles et artificielles."

19. On September 17, 2018, Retrobrands filed an intent-to-use application for the DUNKAROOS mark for cereal-based snack foods, registration number 88119368.

20. On September 24, 2018, Retrobrands filed a cancellation action with the Trademark Trial and Appeal Board, proceeding number 92069685.

21. The parties have stipulated to suspending the cancellation action.

22. The dispute between the parties is definite and concrete, real and substantive, and touches upon the legal relations of parties having adverse legal interests. This substantial controversy is of significant immediacy to warrant the issuance of a declaratory judgment. Accordingly, a case or controversy exists under 28 U.S.C. §1201.

COUNT ONE

DECLARATION OF ABANDONMENT

23. Retrobrands incorporates by reference the allegations of the preceding paragraphs.

24. Under the Lanham Act, abandonment arises when a mark's "use has been discontinued with intent not to resume such use. Prima Facie evidence of abandonment is inferred from three consecutive years of non-use." 15 U.S.C. § 1127.

25. "'Use' of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark." *Id.*

26. General Mills' ceased using the DUNKAROOS mark in commerce in the United States for "cereal-based snack foods and icing" since 2012.

27. General Mills has not used the DUNKAROOS mark in commerce in the United States since then.

28. General Mills has held itself out as having overtly "discontinued" the DUNKAROOS brand products.

29. General Mills had evidenced that it does not have an intent to reuse the DUNKAROOS mark in the United States.

30. General Mills has also overtly demonstrated that it does not have any intent to resume use of the DUNKAROOS mark in commerce.

31. Therefore, by virtue of its overt cessation of use and its explicit intent to discontinue use of the DUNKAROOS mark in commerce in the United States, General Mills has abandoned the DUNKAROOS trademark.

32. Accordingly, Retrobrands is entitled to a declaratory judgment that the General Mills has abandoned its DUNKAROOS trademark for “cereal-based snack food and frosting” as defined by §45 of the Lanham Act.

COUNT TWO

CANCELLATION OF TRADEMARK

33. General Mills no longer has any rights in the DUNKAROOS mark as a result of its continuous non-use of the mark and lack of intent to reuse the mark.

34. General Mills ceased using the DUNKAROOS mark in the United States in 2012.

35. In 2013, General Mills filed a Declaration of Use under Section 8 of the Lanham Act falsely stating that it was still using and had continuously used the mark in commerce.

36. The specimen General Mills submitted to demonstrate its use in commerce in the United States was clearly created for use in a country other than the United States.

37. Registration number 1755584 on the principal register for “Dunkaroos”

should be cancelled.

PRAYER FOR RELIEF

Plaintiff Retrobrands USA LLC requests the following relief:

1. That the Court enter judgment declaring that General Mills has abandoned its DUNKAROOS trademark for “cereal-based snack food and frosting” as defined by §45 of the Lanham Act.
2. Directing the USPTO to cancel registration number 1755584 for the DUNKAROOS mark.
3. That the Court grant Retrobrands such other and further relief as this Court may deem just and proper.

Respectfully submitted,

CHRISTENSEN LAW OFFICE PLLC

Dated: June 21, 2019

/s/ Carl E. Christensen

Carl E. Christensen (#350412)
800 Washington Ave. N., Suite 704
Minneapolis, MN 55401
Ph: (612) 823-4016
Fax: (612) 823-4777
carl@clawoffice.com
Attorney for Plaintiff